



SHERWIN-WILLIAMS.

US EPA RECORDS CENTER REGION 5



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October 23, 2012

VIA EXPRESS MAIL

Anna Cross Esq.

U.S. Department of Justice

Environmental Enforcement Section

P.O. Box 7611

Ben Franklin Section

Washington DC 20014

Re: Eagle Zinc Site – Hillsboro Illinois – The Sherwin-Williams Company Settlement Offer

Dear Anna:

Thank you very much for meeting with us on September 26, 2012 to discuss Sherwin-Williams' settlement offer for the above-matter. During that meeting, DOJ on behalf of EPA offered to settle Sherwin-Williams' liability at the Eagle Zinc Site for \$2,689,444. This letter provides Sherwin's settlement counteroffer.

As DOJ requested during the September 26 meeting, historical information as to the production amounts and time of operation during Sherwin-Williams' ownership of the plant have been obtained. I have also included the affidavits of David Lewis, former plant manager (Exhibit A), and Ken Haber, former controller (Exhibit B), who attest that Sherwin-Williams did not produce any leaded zinc oxide, as the furnace for that specific operation was inoperable since the date of purchase by Sherwin-Williams. Both Messrs. Haber and Lewis state that the facility only operated for 26 months and not the entire 4 years as originally alleged.

As confirmed by Messrs. Haber and Lewis, the Sherwin-Williams plant only operated for a limited time (26 months) as market conditions deteriorated for zinc oxide. As a result, the plant began a shut down and the employees were laid off. During the operational period, only the zinc oxide process was in operation. According to Mr. Lewis, no slag was brought onto the site and in 1982 he announced the plant closure and clean-up operations began (including inside the buildings).

This facility has a operational time span of 97 years, and Sherwin-Williams operated for a mere 26 months. This time period would equate to a 2.23% allocation of time of operation and demonstrates that Sherwin-Williams is *de minimis* at best. In addition, according to Messrs. Haber and Lewis, leaded zinc oxide was never produced by Sherwin-Williams. Therefore, in the event Sherwin-Williams has any liability, it is divisible.

Sherwin-Williams asserts that it is entitled to the CERCLA bona fide prospective purchaser defense. As attested to by Mr. Haber, and as demonstrated by the pre-acquisition environmental due



SHERWIN-WILLIAMS.

diligence sampling documents attached to Mr. Haber's Affidavit, Sherwin-Williams conducted all appropriate inquiries using those standards appropriate in 1982. The ASTM standards for Phase I Environmental Site Assessments had not been promulgated, and such inquiry meets the bona fide prospective purchaser conditions. Moreover, any contamination detected in environmental media during Sherwin's ownership of the site was entirely passive and caused by stormwater runoff from materials left behind by Eagle-Picher. As for the ongoing site work to demolish and decontaminate buildings, as pointed out in the Lewis Affidavit, the buildings were cleaned by Sherwin-Williams prior to the sale to T.L. Diamond & Company.

Sherwin-Williams recognizes that CERCLA litigation has the attendant "litigation risks," as recognized by DOJ and EPA when it informed the U.S. District Court that "litigation risk" called for a reduced payment by Mr. Diamond and his company under the Diamond Consent Decree. Assuming that the past and future response costs are \$32,000,000 as you stated at the September 26 meeting [Sherwin-Williams disputes that number], Sherwin-Williams' 2.23% fair share of settlement costs would be \$713,600. This number does not include the credit of approximately \$60,000 for Sherwin's paid-out RIFS costs. In addition, as you know 22,300 tons of slag and residue were removed from the site under the supervision of the IEPA in 1983. We asked Weston Solutions to give us an estimated cost for that removal: \$3,225,800. See (Exhibit C). In short, even if Sherwin-Williams had liability, Sherwin-Williams has already paid more than its fair share for site clean-up.

In an effort to resolve this matter now, Sherwin-Williams is willing to offer \$800,000 as a full and final settlement, in return for a release of all past and future response costs and claims, and contribution protection (comparable to a CERCLA *de minimis* party settlement), including any claims of the State of Illinois with which EPA has been collaborating on site remediation.

Sherwin-Williams believes this to be a fair and generous offer and trusts that the information we provided describes Sherwin's defenses and willingness to assist EPA in resolving this matter as efficiently as practicable.

Please contact me if you have any questions or comments. I look forward to hearing from you.

Sincerely,

Donald J. McConnell
Senior Corporate Environmental Counsel
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E-mail: don.j.mcconnell@sherwin.com

DJM/pal
Enclosures
Cc: Kim Burke

AFFIDAVIT OF DAVID LEWIS

STATE OF INDIANA)

COUNTY OF HAMILTON)

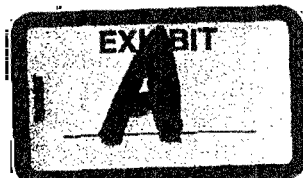
I, David Lewis, being duly sworn, depose and state as follows:

1. My name is David Lewis. I am 75 years old and currently reside at 17165 Willis Drive, Noblesville, Indiana 46038. I am currently retired from employment with The Sherwin-Williams Company. I am of sound mind and am not under any medications that would affect my ability to provide truthful and complete information. I have personal knowledge of the matters in this Affidavit. I have been promised nothing in return for providing this information.

2. I am the former Plant Manager of the Sherwin-Williams zinc oxide plant located on Industrial Park Drive in Hillsboro, Illinois. I served as Plant Manager for Sherwin-Williams at this location from February, 1982 through July, 1982. I was assigned the job of Plant Manager to get the facility operating in top condition should Sherwin-Williams choose to sell the plant, which Sherwin-Williams later did. The plant was purchased by Sherwin-Williams from Eagle-Picher in 1981. At the time I began my duties at the Hillsboro plant in February, 1982, production was not at full capacity, and the building known as the Refinery Building (circled on the attached map) had significant zinc oxide inside the building on the rafters and the floors. This zinc oxide had been left here by the prior owner, Eagle Picher.

3. Shortly after I arrived at the plant in February, 1982, I made a decision to clean the Refinery Building and get the plant in top operating condition. For one week soon after I arrived, I instructed approximately 35 of the 60 employees to dedicate a full week to cleaning the Refinery Building. I was present during the cleaning process, and the Refinery Building was clean after a full week of cleaning. The zinc oxide was blown off the rafters by compressed air, and then swept up from the floor. Because the zinc oxide was pure product, we were able to assay it and sell it.

4. Between February and July, 1982, Sherwin-Williams' employees worked hard to bring other furnaces on-line: the two French press furnaces and the Number 2 American Press furnace which continued to operate. All of these furnaces were in good operational order in July, 1982, when I was given approximately two days notice that the plant would shut down immediately and that I was to layoff all employees. I gave notice to the employees in July, 1982, that the plant was closing immediately. At that time, the plant was in good operating condition. So far as I was aware, no waste material piles were created by Sherwin-Williams' operations. The plant's condition at the time of shutdown in July, 1982, was very good, and no environmental contamination was observed by me.

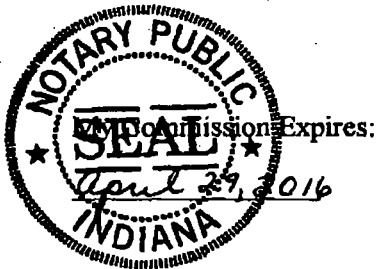


Sherwin-Williams did not dispose of any wastes on-site from any of its processes when I was present at the plant. The buildings were all clean and in good working order. None were in need of any repairs to continue operations. After July, 1982, Sherwin-Williams conducted no further operations at this plant other than shipping finished goods inventory. I resided within a mile of the plant on Lake Hillsboro beginning in October, 1997, and had the opportunity to observe the operations of T.L. Diamond & Co. when I drove past the plant.

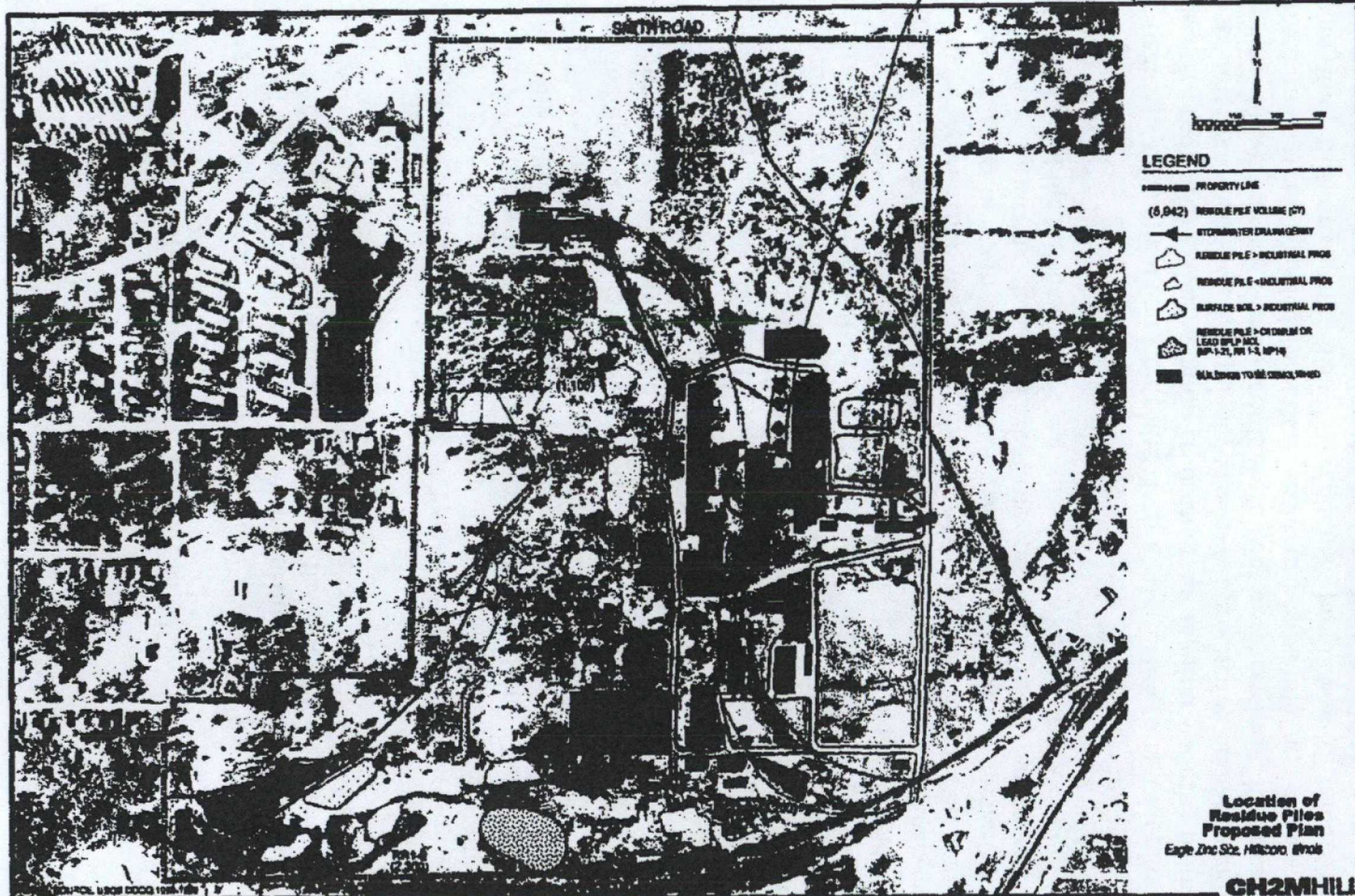
David Lewis
David Lewis

Subscribed and sworn in my presence this 26th day of June, 2009.

Chickie S. Hutton
Notary Public



Refinery Bldg.
David Lewis 6/26/09



AFFIDAVIT OF KENNETH HABER

STATE OF OHIO)

COUNTY OF CUYAHOGA)

I, Kenneth Haber, being duly sworn, depose and state as follows:

1. My name is Kenneth Haber. I currently reside at 17897 Lake Rd., Lakewood, Ohio 44107. I am of sound mind and am not under any medications that would affect my ability to provide truthful and complete information. I have personal knowledge of the matters in this Affidavit. I have been promised nothing in return for providing this information.

2. I am the former accountant and Controller of The Sherwin-Williams Company's (Sherwin) Chemicals Division and was responsible for the accounting activities at Sherwin's Chemicals Division zinc oxide plant located on Industrial Park Drive in Hillsboro, Illinois from 1981-1984. Although my principal office was at that time in Cleveland, Ohio, I visited the Hillsboro plant between 1981-1984 on a regular basis, and had opportunities to observe the plant operations and plant conditions. I began my employment with Sherwin in 1980, and ended my employment with Sherwin in 1998. I am now retired.

3. I was involved in the sale of the Hillsboro plant by Sherwin to T.L. Diamond Company in 1984. In 1983, Sherwin engaged an environmental consultant, Risk Science International, to evaluate environmental conditions at the Hillsboro plant left by the prior owner, Eagle-Picher. A copy of this environmental assessment is attached as (Exhibit A), which references the October, 1980 site sampling (pages 9, 12, 13, 15, and Appendix D, October 1980 pre-acquisition environmental sampling) performed as part of Sherwin's pre-acquisition environmental due diligence. (Exhibit B) is a letter dated October 22, 1980, from Eagle-Picher to Sherwin describing the environmental due diligence to be performed by Sherwin prior to the purchase. The pre-acquisition environmental investigation by Sherwin of the Hillsboro plant was consistent with the practices in use in 1980 by prospective purchasers.

4. In my capacity as accountant and Controller, I regularly reviewed and monitored the Hillsboro plant's production and accounting records. I am familiar with the manner in which these records were maintained, and I have reviewed production and accounting records in preparing this Affidavit. These records were kept by Sherwin in the ordinary course of business, and were intended to reflect accurate accounting and production information from the Hillsboro plant. Sherwin-Williams' production of zinc oxide decreased over time and the facility operated for a total time of 26 months when operations ceased in Spring of 1983 (Exhibit D).



5. The Exhibit A (pages 10, 15, 18) environmental assessment also confirmed Eagle-Picher's use of leaded zinc oxide. Leaded zinc oxide, as is apparent from its name, contains significant concentrations of lead. While Eagle-Picher used leaded zinc oxide as a raw material, Sherwin **never** manufactured leaded zinc oxide at the Hillsboro plant from its purchase in 1980 until its sale to T.L. Diamond & Company in 1984. Sherwin used only white zinc oxide. This raw material feed, white zinc oxide, was used by Sherwin at the Hillsboro plant to manufacture the zinc oxide for sale and distribution.

6. After Sherwin purchased the Hillsboro plant from Eagle-Picher, Sherwin removed 22,300 tons (44,600,000 pounds) of slag, residues and dross left at the site by Eagle-Picher for shipment off-site as part of Sherwin's efforts to improve the condition of the facility. These removals are described in the Sherwin letters to Illinois EPA attached as (Exhibit C). To the best of my knowledge, Sherwin never added slag, dross, or any waste material to any piles at the Hillsboro plant. In fact, while Eagle-Picher had used all of the furnaces at the Hillsboro plant to manufacture zinc oxide, due to poor market conditions between 1981-1984, Sherwin's production was intermittent at best. The annual production by Sherwin when it was actually producing product for about half of the time it owned the Hillsboro plant was less than half of zinc oxide produced on an annual basis by Eagle-Picher just prior to the 1980 purchase. The leaded zinc oxide furnace was inoperable and in need of repair when purchased by Sherwin. Thus, never used by Sherwin. (Exhibit E)

7. Again, to the best of my knowledge when Sherwin owned the plant from 1980-1984, Sherwin operated the plant in an environmentally responsible fashion. First, as described above, Sherwin began a massive cleanup of the plant and removed piles of slag and dross left behind at the plant by Eagle-Picher. See (Exhibit A), Environmental Assessment, page 27 ("[Sherwin] is suffering from problems inherited from previous operations [Eagle-Picher]") Second, Sherwin used a white zinc oxide raw material feed that was higher in zinc purity than the leaded zinc oxide used by Eagle-Picher. Finally, Sherwin dedicated substantial financial and manpower resources to not only removing the slag and dross left behind by Eagle-Picher, but Sherwin made sure it did not contribute to any problem by placing any contaminating materials on the ground at the Hillsboro plant.

Kenneth Haber
Kenneth Haber

Subscribed and sworn in my presence this 18th day of OCTOBER 2012.

Judith C. Gilligan
Notary Public

My Commission Expires:

JUDITH C. GILLIGAN
Notary Public, State of Ohio
My Commission Expires May 16, 2017